FILE COPY

MAR 9 19
CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

No. 19 (Original)

STATE OF ARIZONA, *Complainant*

vs.

STATE OF CALIFORNIA, STATE OF NEVADA, STATE OF UTAH, STATE OF NEW MEXICO, STATE OF COLORADO, STATE OF WYOMING, AND RAY LYMAN WILBUR, Secretary of the Interior, *Defendants.*

REPLY BRIEF OF CALIFORNIA.

U. S. WEBB,
Attorney General of California.

W. B. MATHEWS,
CHAS. L. CHILDERS,
Of Counsel for California.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECTS.

	Page
General Authority of the United States	2
The Decision of the Congress is Conclusive	3
The means which the Congress may adopt to a Constitutional End is Final	3
Improvement of Navigation	5
Quasi-Sovereign Rights	5
Political Power	6
Reclamation of Public Lands	7
Flood Control	9
Flood Control under Commerce Clause	11
Control of Public Lands	12
Objections of Complainant	13
Conclusion	14

CASES CITED.

Boyd v. Nebraska, 143 U. S. 136	12
Camfield v. United States, 167 U. S. 518	12
Chappell v. United States, 160 U. S. 499-509	2
Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238-245	3
Clinton Bridge, 10 Wall. 454	4
Debs In re. 158 U. S. 564	4
Dorr v. United States, 195 U. S. 138	12
Florida v. Mellon, 273 U. S. 12-16	6
Gibson v. Choutesu, 13 Wall. 92	12
Georgia v. Tennessee Copper Co., 206 U. S. 230	6
Indiana vs. United States, 148 U. S. 148	5
Kohl et al. v. United States, 91 U. S. 367-371	3
Kansas v. Colorado, 206 Cal. 46	4, 12
Light v. United States, 220 U. S. 523-536	12
Louis Blue Point Oyster Co. v. Briggs, 229 U. S. 82-88	7
Luxton v. North River Bridge Co., 153 U. S. 525	2
Logan v. United States, 144 U. S. 263	4
Mutual Loan Co. v. Martell, 222 U. S. 225	7
Murphy v. Ramsey, 114 U. S. 15-44	12
Miller v. New York, 109 U. S. 385; 27 L. Ed. 971	5
McCulloch v. Maryland, 4 Wheat. 316	3, 4
Pennsylvania v. W. & B. Bridge Co., 18 How. 421	4
Quarles In re., 158 U. S. 532-535	4
Shiveley v. Bowlby, 152 U. S. 1	2
Siebold Ex parte, 100 U. S. 371	4
Stearns v. Minnesota, 179 U. S. 223-244	3, 13
Tennessee v. Davis, U. S. 257-263	2
United States v. Winans, 198 U. S. 371	2
United States v. Des Moines Nav. & R. Co., 142 U. S. 510-545	3
United States v. Chandler & Dunbar Co., 229 U. S. 53	5, 6, 7
United States v. Kagama, 118 U. S. 375	12
United States v. Midwest Oil Co., 236 U. S. 459-474	12
Union Bridge Co. v. United States, 204 U. S. 364	5
Wisconsin v. Duluth, 96 U. S. 379	3, 5
Wilson v. Shaw, 204 U. S. 24	5

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

No. 19 (Original)

STATE OF ARIZONA, *Complainant*

vs.

STATE OF CALIFORNIA, STATE OF NEVADA, STATE OF UTAH, STATE OF NEW MEXICO, STATE OF COLORADO, STATE OF WYOMING, AND RAY LYMAN WILBUR, Secretary of the Interior, *Defendants.*

REPLY BRIEF OF CALIFORNIA.

MAY IT PLEASE THE COURT:

Briefly supplementing the reply brief of the defendant, Ray Lyman Wilbur, Secretary of the Interior, filed herein by the Honorable, the Solicitor General of the United States, in which reply brief we fully concur, the defendant State of California respectfully submits that the complainant State has not, by her

brief, answered the defendant's objections to her bill of complaint, and in that behalf this defendant more particularly calls to the Court's attention the following points:

GENERAL AUTHORITY OF THE UNITED STATES.

The United States, through the Congress, can act upon any question within its power, as defined by the Constitution, and without the consent of anyone. It may adopt any appropriate means necessary or convenient to bring about the desired and authorized end.

In the case of Tennessee v. Davis, 100 U. S. 257-263, 25 L. Ed. 648-650, the Court said:

> "The United States is a government with authority extending over the whole territory of the Union acting upon the States and the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. *No state government* can exclude it from the exercise of *any authority* conferred upon it by the Constitution, obstruct its authorized officers against its will or withhold from it for a moment the cognizance of any subject which that instrument has committed to it."

Chappell v. United States, 160 U. S. 499-509, 40 L. Ed. 510-513.

Luxton v. North River Bridge Co., 153 U. S. 525, 38 L. Ed. 808.

Kohl et al v. United States, 91 U. S. 367-371.

Shiveley v. Bowlby, 152 U. S. 1, 38 L. Ed. 331.

United States v. Winans, 198 U. S. 371, 49 L. Ed. 1089-1093.

As said by Mr. Chief Justice Marshall, in the celebrated case of McCulloch v. Maryland, 4 Wheat, 316:

> "No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it. • • •
>
> "We cannot doubt, therefore, that Congress has the power to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States holds the territory."

THE DECISION OF CONGRESS IS CONCLUSIVE.

The Congress stated in the Act that, among others, its purpose is to improve navigability and provide for reclamation of public lands. Congress is presumed to have acted with full knowledge of the subject matter and in good faith. Its conclusion is not to be questioned.

United States v. Des Moines Nav. & R. Co., 142 U. S., 510-544.
Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S., 238-245.
Wisconsin v. Duluth, 96 U. S. 379.

THE MEANS WHICH THE CONGRESS MAY ADOPT TO A CONSTITUTIONAL END IS FINAL.

We have seen that the Congress has announced the purpose, by the construction authorized by the Boulder Canyon Project Act, to improve the navi-

gability of the Colorado River and provide for the reclamation of public lands. We do not assume—nor, indeed, can we assume—that the Congress was dishonest in the announcement of this purpose. These are legitimate purposes; therefore, the plan which the Congress adopted is final.

In the matter of Quarles, 158 U. S. 532-535, 39 L. Ed. 1080-1091, this Court, speaking through Mr. Justice Gray, said:

> "The United States are a nation, whose powers of government, legislative, executive and judicial, within the sphere of action confided to it by the Constitution, are supreme and paramount. Every right, created by, arising under or dependent upon the Constitution, may be protected and enforced by such means and in such manner as Congress, in the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object."

McCulloch v. Maryland, 4 Wheat 316.
Logan v. United States, 144 U. S. 263, 36 L. Ed. 429.
Ex-parte Siebold, 100 U. S. 371.
In re Debs, 158 U. S. 564.
Kansas v. Colorado, 206 U. S. 46-88.

Congress has the absolute power to determine what is or is not an obstruction of or an improvement to navigation.

Pennsylvania v. W. & B. Bridge Co., 18 How. 421, 15 L. Ed. 435.
The Clinton Bridge, 10 Wall. 454, 19 L. Ed. 969.

United States v. Chandler-Dunbar Co., 229 U. S. 53, 57 L. Ed. 1063.
Miller v. New York, 109 U. S. 385, 27 L. Ed. 971.
Union Bridge Co. v. United States, 204 U. S. 364, 51 L. Ed. 523.

IMPROVEMENT OF NAVIGATION.

We respectfully maintain that the Colorado River is so notoriously navigable that the Court will take judicial notice of that fact, but even if it be not navigable at all, still the Act will not fail. Congress has declared its intention to improve the navigability of this stream. The commerce clause of the Constitution says nothing about the improvement of the navigability of navigable streams. It refers to the regulation of commerce. Under this clause, the Congress has been sustained in the authorization of the construction of a canal (Wisconsin v. Duluth, 96 U. S. 379). Under it, Congress has been sustained in the authorization of a highway (Indiana v. United States, 148 U. S. 148). Under it, Congress has been sustained in the building of a railroad (Wilson v. Shaw, 204 U. S. 24). If this stream is not now navigable, Congress has authority to make it so. If private property is to be taken or injured, ample authority is given in the Act itself for the exercise of eminent domain (Sec. 1).

QUASI-SOVEREIGN RIGHTS.

The State has a right, in her quasi-sovereign capacity, to sue or defend for the protection of her people, but she must first show that her people or their property are in immediate need of such protection. Until

that is shown, no case or controversy of which the Court will take judicial cognizance is presented. All of the leading cases which the complainant cites to this point are where damage to persons or property is present or imminent. In Georgia v. Tennessee Copper Co., 206 U. S. 230, the damage had continued so long that the defendant actually pleaded, and the Court passed upon, the question of laches. A State can maintain such an action only when there is a wrong to be redressed or a right to be enforced by judicial process (Florida v. Mellon, 273 U. S. 12-16). No such condition prevails here. The complainant, in her brief (p. 8), states:

> "The Boulder Canyon Project Act is unconstitutional and void. The bill of complaint states a cause of action, in alleging an impending threat of infringement by defendant Wilbur, under authority of an unconstitutional enactment * * *".

It is clearly an attempt to have this Court declare an Act unconstitutional—nothing more—an abstract question.

POLITICAL POWER.

It will be observed that the complainant, in her brief, does not claim to own the running water of this stream, nor could she do so. Only such water as may be taken into possession and control, and only while in such possession and control, is subject to ownership. (United States v. Chandler-Dunbar Co., 229 U. S. 53; Kinney on Irrigation and Water Rights, 2d Ed. Sec. 333; Wiel on Water Rights, 3d Ed. Sec. 15). She refers to the "control" of these waters;

in other words, an exercise of the police power, which is another term for the power of government (Mutual Loan Company v. Martell, 222 U. S. 225). It is an exercise of political power.

The right of the United States to exercise control over the Colorado River for improvement of navigation or otherwise is also the exercise of political power (United States v. Chandler-Dunbar Co., *supra;* Louis Blue Point Oyster Co. v. Briggs, 229 U. S. 82-88). It is thus a conflict between the political power of the State and the political power of the Nation.

RECLAMATION OF PUBLIC LANDS.

The complainant, in her brief, states (p. 80):

> "There is nothing in the Act, or in the pleadings, to indicate that there is an acre of land belonging to the United States which can be irrigated by water from the proposed reservoir."

In the bill of complaint (p. 32, par. XXIX), the complainant states:

> "That the reclamation of public land is not the purpose of said Act is evident from the fact that 75 per cent of all land which will, or can be, reclaimed or benefited by the construction of the dam, reservoir, power plant and other works authorized in the Act, or by the storage and delivery of water as in said Act provided, is privately owned land".

If 75 per cent is privately owned, then by clear inference the other 25 per cent, is public. Even if no other direct reclamation works were authorized, the creation of large storage would be a logical first step looking toward such reclamation.

The complainant, in her brief (pp. 86 and 87), refers to the provisions of her Enabling Act and Constitution, wherein certain property rights were reserved to the Nation. One is a provision for the selection of lands along the river by the government for power purposes. This selection was made, including the lands at Black Canyon. The other relates to reclamation and is, in part, as follows:

> "There is hereby reserved to the United States, with full acquiescence of this State, all rights and powers for the carrying out of the provisions by the United States of the Act of Congress entitled" Reclamation Act "to the same extent as if this State had remained a territory.

The complainant, in her brief, tells the Court that she has repealed the section of her Constitution above quoted from. Such attempted repeal, however, is wholly ineffective.

As said by this Court through Mr. Justice Brewer, in considering a similar provision relating to Minnesota in the case of Stearns v. Minnesota; 179 U. S. 223-244:

> "That these provisions of the Enabling Act and the Constitution, in form at least, made a compact between the United States and the State, is evident. In an inquiry as to the validity of such a compact, this distinction must at the outset be noticed. There may be agreements or compacts attempted to be entered into between two States, or between a State and the Nation, in reference to political rights or obligations, and there may be those solely in reference to property belonging to one or the other. That different considerations may underlie the question as to the validity

of these two kinds of compacts or agreements is obvious. It has often been said that a State, admitted into the Union, enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations; Whereas on the other hand, a mere agreement in reference to property involves no question of equality of States, but only of the power of a State to deal with the Nation or with any other State in reference to such property. The case before us is one involving simply an agreement as to property between a State and the Nation.

"That a State and the Nation are competent to enter into an agreement of such a nature with one another has been affirmed in past decisions of this Court, and that they have been frequently made in the admission of New States, as well as subsequently thereto, is a matter of history."

FLOOD CONTROL.

One of the purposes of the Boulder Canyon Project Act is "controlling the floods * * * and regulating the flow of the Colorado River". The bill of complaint does not allege the non-existence of a flood menace on the lower river and below Black Canyon, or at all. The United States is the owner of nearly 600 square miles of irrigable public lands adjacent to the lower river, and below Black Canyon (Senate Document 142 67th Congress, 2d Session, pp. 13-15, 47-80). The United States has constructed and is the owner of the Laguna Dam, some eighteen miles above the international boundary line between the United States and Mexico.

On January 12, 1907, President Theodore Roosevelt addressed a Special Message to the Congress upon the subject of the then serious flood of the Colorado River, wherein he said in part:

"If the break is not closed before the coming spring flood of 1907, it appears highly probable that all of the property values created in this Valley will be wiped out, including farms and towns, as well as the revenues derived by the Southern Pacific Company. Ultimately the channel will be deepened in the main stream itself up to and beyond the town of Yuma, destroying the homes and farms there, the great railroad bridge, and the Government works at Laguna Dam, above Yuma * * *

"If the river is not put back and permanently maintained in its natural bed, the progressive back cutting in the course of one or two years will extend upstream to Yuma, as before stated, and finally to Laguna Dam, now being built by the Government, thus wiping out millions of dollars of property belonging to the Government and to citizens * * *

"The great Yuma Bridge will go out * * * if the break in the Colorado River is not premanently controlled, the financial loss to the United States will be great."

The United States has inherent power to protect its own property. The United States is the owner of the Laguna Dam; the United States has constructed the Yuma Reclamation Project at a cost of many millions of dollars (Annual Report of the Secretary of the Interior, 1927, p. 272). The United States has constructed and is maintaining extensive levee protective works along the lower river Act of July 3, 1926 (Deficiency), 44 Stat. 857; Act of January 21, 1927 (Rivers and Harbors, 44 Stat. 1021).

As indicated by the Message of President Roosevelt, these works may all be destroyed by flood.

Congress will determine the most appropriate method of protecting Government property. Storage and regulation of the flow of the river is the only means of permanent protection of these properties from floods (Report of Senate Committee on Irrigation and Reclamation, March 20, 1928, Report 592, 70th Congress, 1st Session, p. 20).

FLOOD CONTROL UNDER COMMERCE CLAUSE.

Waiving, for this purpose only, the right of the United States to construct flood control works for the protection of its property and the property of its citizens, we find that in the particular case involved, the United States clearly has the right to construct flood control works under the Commerce Clause (Article 1, Section 8, Part 3).

It will be observed that it is commerce among the several States that Congress is authorized to regulate. This provision has been very definitely applied to navigation, but clearly is not limited to navigation. There are five important lines of interstate commerce crossing the river below Black Canyon. Two of these are transcontinental railroads and three are recognized "Federal Aid" highways (Report of House Committee on Irrigation and Reclamation, March 15, 1928, Report No. 918, p. 22).

It is common knowledge that there is very large freight and passenger traffic moved to and from the Pacific Coast and points east of the Colorado River over these great arteries of commerce. It is obvious that these lines of commerce could be seriously interrupted by flood waters of this river. Indeed, President Roosevelt, in his Message of January 12, 1907,

above quoted from, points out that if the flood is not controlled, the channel would be deepened upstream "destroying * * * the great railroad bridge * * *." Further "The great Yuma bridge will go out * * *."

The President, in his Special Message above referred to, recommended to the Congress the advisability of taking immediate steps to control this river.

CONTROL OF PUBLIC LANDS.

The United States has the absolute power and control of the public lands (Constitution, Article 4, Sec. 3).

First, as a proprietor.

United States v. Midwest Oil Co., 236 U. S. 459-474, 59 L. Ed. 673-681.
Camfield v. United States, 167 U. S. 518, 42 L. Ed. 260.
Gibson v. Chouteau, 13 Wall. 92-99, 20 L. Ed. 534-536.
Light v. United States, 220 U. S. 523-536, 55 L. Ed. 570-574.
Stearns v. Minnesota, 179 U. S. 223.
Kansas v. Colorado, 206 U. S. 46.

Second, as a soverign.

Murphy v. Ramsey, 114 U. S. 15-44.
United States v. Kagama, 118 U. S. 375.
Gibson v. Chouteau, 13 Wall. 92, 20 L. Ed. 534.
Dorr v. United States, 195 U. S. 138.
Boyd v. Nebraska, 143 U. S. 136.

The Congress, then, has full discretion to specify the conditions upon which it will permit these lands to be used.

OBJECTIONS OF COMPLAINANT.

The objection of the complainant to the contracts heretofore made is based solely upon the alleged unconstitutionality of the Act under which they were executed, without showing present or immediately threatened injury to person or property therefrom. Of course, this presents only an abstract question.

Arizona complains:

1. That the Act and the compact are unconstitutional and void.

This, standing alone, presents only an abstract question, which the Court will not consider.

2. That the defendant Wilbur, under the Act, threatens to interfere with her control of running water within the State.

This presents a conflict of political authority—one beyond the jurisdiction of the Court.

3. That she will be adversely affected by the compact.

(a) She is not a party to the compact and is not bound by it.

(b) The Congress agrees that the United States—a separate legal entity—will be bound by the terms of the compact. Certainly, Arizona cannot complain if the United States wants to be bound.

(c) The Congress impresses the use of the public land with the terms of the compact. This is clearly within the absolute discretion of Congress. It is a *privilege* which Arizona seeks to protect, not a *right*.

On none of these even does Arizona show any present or immediately threatened injury.

Several of the points here briefly touched upon are fully developed, with argument and authorities, in

the brief filed by our co-defendant States, to which brief this defendant most respectfully directs the Court's attention.

CONCLUSION.

The bill of complaint clearly does not show any present or immediately threatened injury to person or property. The relief prayed for, therefore, becomes merely an abstract question, and the granting of such relief would not only be the determination of an abstract question, but the determination of political rights as between the State and the Nation.

The motion to dismiss, therefore, should be granted.

Respectfully submitted,

STATE OF CALIFORNIA,

By U. S. WEBB,
Its Attorney General.

W. B. MATHEWS,
CHAS. L. CHILDERS,
Of Counsel for California.